1941

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File No. Finance | 41

Legal DEPARTMENT

A BRANCH

Subject:—

Opinions under Bombay Finance

Act 1932

P-17

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Mr/14/4.

R.L.A.'s Office

The question for consideration is whether the District Local Board, Ahmedabad, is liable to pay the urban Immoveable property tax in respect of the property known as the Grand Hotel buildings for the period 1-4-1940 to 31-10-1940 i.e. till Government resumed possession of it.

2. Under sub-section (1) of section 26 of the Bombay Finance Act, 1932, the tad is primarily leviable on the actual occupier of the buildings or lands if he holds them on a building or other lease granted by or on behlf of Government, or on a building or other lease from any person or local authority. Sub-section (2) of section 26 provides that the urban immoveable property tax shall be primarily leviable, if the property is let, from the lessor. It appears that the property was leased to the proprietor of the Grand Hotel by the Taluka Local Board (Whose successo-in law is the District Local Board) with the sanction of the Commissioner; but in view of the fact that the property, as now held by the Privy Council, did not vest in the Board but belonged to Government that lease wouldbe void. The District Local Board, therefore, cannot be deemed to be the lessor so as to be primarily liable for the tax under sub-section (2) of section 26; nor can the hotel proprietor be deemed to be holding the lands on a building lease or other lease analogous to a building lease granted by Government or on its behalf, so as to incur liability to pay the tax under sub-section(1) of section 26. Under these circumstances the liability to pay the tax will decend upon Government as the person in whom, the property being unlet, the right to let vests a s provided by sub-section (2)(c) of section 26.

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U.R. to R.D. 4810, dated 26-5-1941

Office of the R.L.A.

The question raised by the D.D. M.A.& C., Southern Command in his letter at page 1 ante is whether under the and (c) of section 23 of that Act the Urban Immovable Property tax is leviable on lands and buildings leased by the Central Government from private owners or from the Municipality of Bombay in connection with the Defence of India and the expansion of the army.

2. Section 22 of the Bombay Finance Act provides for levy of the Urban Immovable Property tax on buildings and lands Clause (b) of section 23 of the Act provides for exemption from the levy of the tax on buildings and lands vesting in His Majesty for purposes of the Central Government. Buildings and lands leased by the Central Government for temporary purposes cannot be said to vest in the Central Government within the meaning of the provision. They do not belong to the Central Government whose only rights in respect of such properties are the rights of occupation and user, subject to ther terms of the lease. It is true that in R.L.A's opinion No 125-P Confl. dated the 24th September 1940, it is held that the lands the use of which is requisitioned by the Central Government under rule 80(1) of the Defence of India Rules vest in the Central Government and are therefore exempt from liability to payment of land revenue under section 154 of the Government of India Act. But that opinion was given in respect of lands the use of which was requisitioned under rule 80(1) of the Defence of India Rules. This rule empowers the Central Government to authorise by order subject to any restrictions or conditions imposed by the order, the use of any land for military purposes during such period as may be specified. Under clause (b) in this rule, the order requisitioning the land may also provide for prohibiting or

restricting the exercise of rights of way over the land and of other rights which are enjoyed by any person, whether by virtue of an interest in the land or otherwise. It is therefore possible to prohibit the exercise of all rights which any person may possess in respect of the requisitioned land. The possession of these lands is also obtained by the exercise of powers conferred by statute and not be agreement. Cases in which the lands are requisitioned can therefore be distinguished from those in which the lands are leased by agreement. In my opinion, therefore, properties which are taken on lease for temporary purposes by the Central Government are not entitled to exemption under clause(b) of section 23 of the Bombay Finance Act.

3 Clause (c) of section 23 of the Bombay Finance Act provides for exemption in respect of buildings and lands belonging to a municipality and used solely for public purposes and not used or intended to be used for purposes of profit. This clause does not apply to buildings and lands leased from private owner. As regards lands leased from municipalities, as the municipalities presumably drived profit by leasing them out they cannot be held to be land "not used or intended to be used" for purposes of profit. The buildings and lands, therefore are not entitled to exemption under this clause also.

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7/6
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U.R. to R.D. No. 5200 dated the 9th June 1941

Ur/14/4

The first question to be considered inthis case is as to the legality of the recovery of the Urban Immoveable Property tax by the Notified Area Committees in Chembur, Mulund, Bhayandar and Sabarmati.

2. On 31st May 1940 Government issued notifications under section 190(2) of the Bombay District Municipal Act, 1901, cancelling with effect from 1st April 1941, all the previous notifications under which Bhayandar, Mulund, Sabarmati and Chembur were constituted Notified areas.(see G.D. Notifications Nos. 2797/33, 2797/33(a) and 2797/33(b) and dated 31st May 1940) By Government Notification, General Department No. 518/33 dated 22nd October 1940 the area which presumbaly corresponds to the area comprising the Sabarmati Notified Area was declared to be a village with effect from 1st April, 1941. Similarly by Government Notification, General Department No 518/33 dated 28th February 1941 issued in exercise of the Powers conferred by section 4(1) of the Bombay Village Panchayats Act, 1933, the local areas of Bhyander, Mulund and Chembur were declared as villages for the purpose of the said Act with effect from 1st April 1941. By Government Notification, General Department No.4754/33 dated 19th March 1941 issued under section 190(2) of the Bombay District Municipal Act and in supersession of the Government Notification, General Department No 2797/33(b) dated 31st May 1940, the Government Notification, General Department No 152-I dated,10th November 1926 constituting the Notified Area Committee of Chembur was cancelled with effect from 1st April or any subsequent date on which the village panchayat will actually come into force. Similar notifications were also issued in respect of the areas of Bhayandar and Mulund cancelling the Notified Areas with

effect from 1st April 1941 or any subsequent date on which the village panchayats will actually come into force (see Government Notification, General Department No 2797/33(a) and No.4454/33 both dated 29th March 1941). Village Panchayats have not yet been constituted in any of the four areas.

3. The effect of these several notifications appears to be that the local area of Sabarmati has been declared a village and its Notified Area Committee abolished with effect from 1st April 1941. (This may however please be verified by Revenue Department). As regards Chembur, Bhayandar and Mulund their Notified Area Committees are still functioning and will continue to function up to the date on which the respective village panchayats will actually come into force.

4. The question as to whether a Notifies Area Committee can lawfully function in any area declared to be a village under the Bombay Village Panchayats Act is not quite free from doubt. It appears, however, that so long as the new local authority viz. the village panchayat, has not been constituted i.e. not in a position to commence functioning in the same area, the old local authority, e.g. any subsisting Notified Area Committee, may carry on its duties as before. (Cf. R.L.AIs U.R. to G.D. No 8531 dated 29th September 1941 No 6726 dated 31st August 1938 and Advocate General's opinion dated 15th October 1938.) Sub-sections (1) and (3) of section 28A of the Bombay Finance Act, 1932 when read together show that the modifications made by sub-section (3) will become operative not upon the mere declaration of an area as a village under section 4 of the Bombay Village Panchayats Act but only upon the relevant Notified Area "ceasing to be a Notified Area and being declared a village under section 4

of the Bombay Village Panchayats Act, 1933." In respect of th Bhyandandar, Mulund and Chembur areas, therefore, the old Provisions of Part VI of the Bombay Finance Act will remain operatiye as they were before i.e. without the modifications introduced by section 28A(3). Consequently, so long as the Notified Area Committees are validly functioning the collection of the Urban Immoveable Property tax will have to be undertaken as before by these Committees. In the case of Sabarmati, however, its Notified Area Committee having ceased to function with effect from 1st April, the authority to collect the Urabon Immoveable Property tax in this are would be the ~~Collar~~ Collector or such officer as he may authorise in this behalf under the modified provisions of section 24(1)(c) and not the defunct Notified Area Committee.

5. As regards rules to be prescribed under the Act, the suggestions made by the Scretary, Revenue Department, appear to be ade uate and free from objection from the legal point of view The relevant rules when drafted may in due course be sent to the R.L.A. for scrutiny from legal point of view.

Sd/-
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Remembrancer of Legal Affairs.

U.R. to R.D. No. 10330 dated the 2nd December 1941.

Submitted.

2. The B.E.S.T.Co.Ltd., desires to change its present system of reading meter, presenting Bills and recovering electricity duty. At present the entire work of reading the meters and preparing bills of about 80000 consumers is concentrated within a period of about ten days in a month. This method was suitable in the beginning when the number of consumers was small, but the Company now proposes to change this system and to adopt a new one by which it will be able to spread to work over the whole months. It is pointed out that the introduction of the new system will cause some difficulties in the intial period of about a month and a half for the adjustment of electricity duty as the consumers instead of receiving bills for a months will recieve bills in some cases for a period more than a month and in other cased for a period of less than a month. To overcome these difficulties, it is proposed to adopt the following method, suggested by the Company:-

(1) When the bill is for less than a month and the consumption to be charges is 12 units or under, if the party's monthly consumption is generally over 12 units, the duty may be charged 1¼ anna per unit instead of at 1 anna per unit.

(2) When the bill isfor more than a month and the consumption to be charged is over 12

units, if the party's consumption is generally less than 12 units per months the dut may be charged at 1 anna per unit instead of at 12 annas per unit.

3. The Collr. of Bombay says that from the administrative point of view he see no objection but that he is doubtful whether legal difficulties might not arise in connection with rule 8 of the Electricity Duty Act Rules, The Collr. is of the opinion that some consumers might raise the point that rule 8 isnot being properly complied with and that they are not bound to pay electricity duty. For instance, If a consumer receives a bill covering a period of 15 days only for less the 12 units but is charged duty at 1½ anna per unit because his monthly consumption generally exceeds 12 units, he might refuse to pay the higher rate of a duty and a court of law might unhold his refusal. The Secy. R.D. states that the difficulty arises not so much from rule 8 (which can be amended if necessary) but from the wording of the first Schedule to Part II of the Bombay Finance Act 1932,. This Schedule prescribes differential rates of duty based on consumption by month. There is no provision at all for calculating duty on consumption for a shorter period. i.e. does not seem permissible when meter readings are taken for a shorter period, to calculate monthly consumption by rule 3 and to fix the duty accordingly, nor is it permissible to base duty on the consumer "generally" as proposed by

the B.E.S.T; it is the actual consumption that counts. The R.L.A. has been asked to advise in the matter.

4. Entry(a) of the First Schedule to Part II of the Bombay Finance Act, 1932, provides as follows:-

(a) in respect of all premises not falling under clause (b) and not exempted under the provisions of section 5 and the Second Schedule.	(1) In the City of Bombay	(i) for each unit of energy consumed for the Use of a cinema house or theatre...		3/4 anna per unit.
		(ii) For each unit of energy consumed for any other purposes	(a) When the total consumption per month does not exceed 12 units	1 anna per unit.
			(b) Where the total consunption per month exceed 12 units	1½ annas per Unit.

It appears that in cases of energy consumed for purposes other than use of cinema houses and theatres, the entry contemplates the levy of the duty on the besis of the total consumption per-month, It is therefore not competent to levy duty on the the basis of energy consumed during a period which is shorter or longer than a month. As the method propsed to be adopted by the B.E.S.T.Co. for charging the

duty during the interim period would in double levy of the duty on the basis energy consumed during a period which is either shorter or longer than a month, it is inconsistent with the provisions of the Act and is therefore not legally feasible. Apart from this the provisions "the party's monthly consumption is generally over 12 units" is vague. The implications of the word "generally" are not clear. For instance it is not clear as to monthly consumption of what period are to be taken into account and whether a bare majority of monthly periods taken into account or something more that a bare majority is required for holding that a party's consumption is generally over 12 units. It will thus be seen that the Company's proposal is open to legal as well as practical objections.

Id/29/1/41
A.S.

It appears from a plain reading of clause (a) (ii) in the first schedule to Part II of the Bombay Finance Act, 1932 that the duty is to be levied according to the number of units consumed per month. The proposal made by the Bombay Electric Supply and Tramways Co. Ltd. at p. 3 ante to charge the present system of meter reading and billing would admittedly mean that during the intial period of a month and a half some of the bills for the electricity duty will be for a period exceeding one month and some for a period less than a month. But the

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Seen and returned.

2. The view taken by the Secretary, Revenue Department, in his note at page 5 ante is correct.

Sd/- 13/12

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U.R. to R.D. No. 10807, dated the 15th December 1941